



June 13, 2018

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington, D.C. 20554

RE: Interpretation of the TCPA in Light of D.C. Circuit Decision in ACA International (CG Docket No. 18-152; 02-278)

Dear Ms. Dortch:

On behalf of Randolph-Brooks Federal Credit Union ("RBFCU"), this letter is being submitted in response to the Federal Communications Commission's ("FCC") Public Notice regarding interpretation of the *Telephone Consumer Protection Act* ("TCPA") in light of the decision from the U.S. Court of Appeals for the D.C. Circuit in *ACA International v. FCC*. We greatly appreciate the opportunity to comment.

Automatic Telephone Dialing System ("ATDS")

The TCPA defines an ATDS as "equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." In the 2015 Declaratory Ruling and Order, the FCC defined "capacity" to include equipment even if it lacked the present capacity to generate and dial random or sequential numbers. Additionally to date, the FCC has declined to clarify that a dialer is not an ATDS unless it has capacity to dial numbers without human intervention. Recently, the D.C. Circuit reversed the FCC's interpretation of "capacity" as overly expansive and requested greater clarity on the definition of "automatic." The FCC now seeks comments on what constitutes an ATDS and how to narrowly interpret the word "capacity" to better comport with the congressional findings and intended reach of the statute.

Based on the D.C. Circuit's guidance in its recent decision, RBFCU believes the FCC should (1) clarify that to be an ATDS, equipment must use a random or sequential number generator to store or produce numbers and dial those numbers *without human intervention*, and (2) find that only calls made using *actual* ATDS capabilities are subject to the TCPA's restrictions. To qualify as an ATDS, the equipment's dialing capabilities must be completely "automatic" meaning non-manual, robotic, and without human action. Additionally, only calls made using actual ATDS capabilities should be subject to the TCPA's restrictions. These changes will help to ensure that credit unions contacting their members with important information will not violate the TCPA and yet will properly achieve the FCC's mission to narrowly define an ATDS to comport with the D.C. Circuit's ruling.

Importance of Member Communication

Embedded in the credit union mission is the principle of "people helping people." Credit unions are community based, not-for-profit, member-owned financial cooperatives that have a unique relationship

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with their members. Because members are owners of the credit union, members have a vested interest in being informed about different aspects of the credit union's operations, including governance communications, fraudulent activity, and account information such as overdue payments. Having more information, not less, is beneficial to credit union members.

Additionally, credit unions are uniquely committed to serving members of modest means and supporting communities which are underserved by commercial, for-profit banks. As such, we seek to inform members about important account information so they can better manage their finances. Because many members live from one paycheck to another, it is critical that regulations do not restrict credit unions from openly communicating to members about account balances, upcoming bill payments, or other account information. Accordingly, it is critically important for members to receive this information in a timely and efficient manner. Regulations which restrict such communication are burdensome to the credit union and prevent important information from reaching members.

Conclusion

RBFCU believes the TCPA must be updated so that credit unions can openly communicate with their members regarding important member information without facing potential TCPA liability. RBFCU hopes the FCC will adopt the above mentioned suggestions and continue to consider the importance of member communication as it modernizes the TCPA. We thank you once again for the opportunity to comment on this important issue.

Sincerely,

Mark Sekula,
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